



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2003

Ms. Kaylene Ray
Manager, Legal Services
Texas Workers' Compensation Commission
4000 South IH-35, MS-4D
Austin, Texas 78704

OR2003-9262

Dear Ms. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193201.

The Texas Workers' Compensation Commission (the "commission") received a request for information regarding the response to an administrative violation referral submitted to the commission regarding the failure to timely file a First Report of Injury for the requestor, an injured employee. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information contains medical records, access to which is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by the MPA. Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Here, the requestor is the patient whose medical records are at issue. For your convenience, we have marked the documents to show which are medical records subject to the MPA.

We now address your section 402.092 claim for the remaining information. Section 402.092 provides that information maintained in the investigative files of the commission is confidential and may not be disclosed except in four limited circumstances. Labor Code § 402.092(a). "Investigative file" is defined as "any information compiled or maintained by the commission with respect to a commission investigation authorized by law." *Id.* § 402.092(d). Section 414.005 of the Labor Code provides that the commission's compliance and practices division shall maintain an investigation unit for the purpose of conducting investigations relating to alleged violations of the Texas Workers' Compensation Act (the "Act") and commission administrative rules. *See* Labor Code § 414.005; *see also id.* §§ 414.001, .002.

You inform us that the information at issue concerns possible violations of the Act. You state that the commission maintains investigation files pursuant to section 414.005 of the Labor Code. You indicate that the requested information is contained in such an investigation file, and is confidential under section 402.092. You indicate that the commission has not made any findings relevant to section 402.092, subsections (e) and (f) of the Labor Code, that would affect the disclosure status of the investigation file at issue.¹

¹ These subsections provide:

(e) The commission, upon request, shall disclose the identity of a complainant under this section if the commission finds:

- (1) the complaint was groundless or made in bad faith; or
- (2) the complaint lacks any basis in fact or evidence; or
- (3) the complaint is frivolous; or
- (4) the complaint is done specifically for competitive or economic advantage.

(f) Upon completion of an investigation where the commission determines a complaint is groundless, frivolous, made in bad faith, or is not supported by evidence or is done specifically for competitive or economic advantage the commission shall notify the person who was the subject of the complaint of its finding and the identity of the complainant.

Labor Code § 402.092 (e), (f).

Based on our review of the submitted information and your representations, we conclude that the remaining information at issue consists of investigative material that is subject to section 402.092. A release in response to the present request would not constitute a disclosure under one of the four permissible circumstances enumerated in section 402.092(a) of the Labor Code. Thus, the remaining investigative file information must be withheld under section 552.101 in conjunction with section 402.092.²

You request that this office issue a previous determination to categorically encompass any commission investigation files. We decline to issue such a determination at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

In summary, the marked medical records may only be released as provided under the MPA. The remaining information is excepted from disclosure under section 552.101 in conjunction with section 402.092 of the Labor Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

² As our ruling is dispositive, we need not address your remaining arguments against disclosure.

at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 193201

Enc. Submitted documents

c: Ms. Sylvia Rhodes
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(w/o enclosures)